



In the Matter of the Appeal of )  
 )  
LAWRENCE D. AND CRISTY J. HOFFMAN )

For Respondent: Kathleen M. Morris  
**Counsel**

This appeal is made pursuant to section **18593** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lawrence D. and Cristy J. Hoffman against a proposed assessment of additional personal income tax in the amount of \$623.46 for the year 1977.

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The sole issue presented for determination by this appeal is whether appellants have established error in respondent's proposed assessment of additional personal income tax for the year in issue.

In 1977, appellants insulated the floor, walls, windows, ceiling, and hot water pipes of their personal residence; skylights were also installed. The total cost of the aforementioned items, which were not simultaneously installed with a "solar energy system" (as that term was defined for the year in issue in former subdivision (g) of Revenue and Taxation Code section 17052.5<sup>1/2</sup>), was \$4,915.07. On their joint California personal income tax return for 1977, appellants computed a solar energy tax credit in the amount of \$2,703.28 (55 percent of the \$4,915.07). The claimed credit was utilized to the full extent of appellants' tax liability.

Upon examination of their return, respondent determined that appellants were not entitled to a solar energy tax credit because the aforementioned items had not been installed in conjunction with a solar energy system; the subject notice of proposed assessment was subsequently issued. Appellants protested respondent's action, claiming that a solar energy system was being constructed. When appellants failed to reply to respondent's request for additional information regarding this system, respondent affirmed its proposed assessment, thereby resulting in this appeal.

Revenue and Taxation Code section 17052.5 provides for a tax credit equal to 55 percent of the cost of certain solar energy devices installed on premises located in California which are owned and controlled by the taxpayer claiming the credit, up to a maximum credit of \$3,000. The same section also provides that the Energy Resources Conservation and Development Commission (hereinafter referred to as the "Energy Commission") is responsible for establishing guidelines and criteria for solar energy systems which are eligible for the solar

<sup>1/</sup> AB 3623 (Stats. 1978, ch. 1159), operative for taxable years beginning in 1978, amended the definition of the term "solar energy system," and rewrote subdivision (g) of section 17052.5 as subdivision (i)(6)(a).

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energy tax credit. Pursuant to subdivision (a)(5) of section 17052.5, energy conservation measures applied in conjunction with solar energy systems to reduce the total cost in back-up energy requirements of such systems are also eligible for the tax credit.

Appellants contend that respondent improperly disallowed their claimed solar energy tax credit for the following reasons: (i) the insulation and skylights were installed in conjunction with a solar energy system; and (ii) the devices installed constitute a "passive thermal system" within the meaning of Revenue and Taxation Code section 17052.5, subdivision (i)(8), <sup>2/</sup> and thereby qualify for the tax credit. After careful review of the record on appeal, and for the specific reasons set forth below, we must conclude that respondent properly disallowed appellants' claimed tax credit.

Section 17052.5, subdivision (a)(5), provides, in pertinent part:

Energy conservation measures applied in conjunction with solar energy systems ... shall be considered part of the systems, and shall be eligible for the tax credit. ... Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the [Energy Commission] as part of the solar energy system eligibility criteria.

During the year in issue, Energy Commission regulations provided that wall, floor, hot water pipe, and ceiling insulation constituted energy conservation measures which would qualify for the solar energy tax credit when, among other requirements, they exceeded energy conservation building standards required by law at the time of original construction of the building, and were installed in conjunction with a solar energy system. (Former Cal. Admin. Code, tit. 20, reg. 2605, subds. (b), (c), and (d); see also Cal. Admin. Code, tit. 20, reg. 2604, subd. (e).)

2/ While appellants have cited Revenue and Taxation Code section 23601 in support of this contention, it is evident from their arguments on appeal that this citation is in error and that they are actually relying upon subdivision (i)(8) of Revenue and Taxation Code section 17052.5.

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Skylights *were* ineligible for the tax credit because they neither qualified as solar energy systems nor as energy conservation measures.

It is well established that respondent's determination of a deficiency assessment is presumed correct, and the burden of proving that the determination is erroneous is on the taxpayer. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Pearl R. Blattenberger, Cal. St. Bd. of Equal., March 27, 1952.) This presumption cannot be successfully rebutted when the taxpayer fails to present credible, competent, and relevant evidence as to the issues in dispute. (Cf. Banks v. Commissioner, 322 F.2d 530 (8th Cir. 1963); Estate of Albert Rand, 28 T.C. 1002 (1957).)

While appellants claim that the energy conservation measures were installed in conjunction with a solar energy system, they have failed to provide any evidence supporting that assertion. Furthermore, they have failed to establish that the insulation they installed exceeded the energy conservation building standards required by law at the time their residence was constructed.

Finally, appellants' alternative argument that their claimed credit should be allowed because the insulation and skylights constituted a "passive thermal system" within the meaning of section 17052.5, subdivision (i)(3), is without merit. That subdivision is effective <sup>3/</sup> only for taxable years subsequent to the year in issue, 3/ and therefore is not applicable to the instant appeal.

3/ AB 3623 (Stats. 1978, Ch. 1159), operative for taxable years beginning in 1978, made substantial changes throughout section 17052.5, including the addition of subdivision (i)(8).

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Lawrence D. and Cristy J. Hoffman against a proposed assessment of additional personal income tax in the amount of \$623.46 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of **July**, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett\_\_\_\_\_, Chairman

Ernest J. Dronenburg, Jr.\_\_\_\_\_, Member

Richard Nevins\_\_\_\_\_, Member

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\_\_\_\_\_, Member